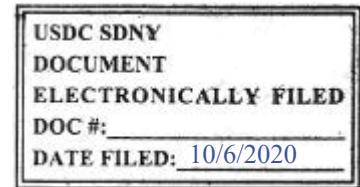


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



Rinaldo Pierno,

Plaintiff,

—v—

Fidelity Brokerage Services, LLC,

Defendant.

18-cv-3384 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

Pro se plaintiff Rinaldo Pierno has filed a “Notice of Motion to Adjudicate Plaintiff’s Breach of Contract Regarding FINRA Arbitration.” Dkt. No. 36. Over a year-and-a-half ago, this Court adopted the Report and Recommendation of Magistrate Judge Stewart Aaron holding that Pierno’s claims could proceed only in arbitration. *See* Dkt. Nos. 29, 34. Pierno states in his motion that “[n]o arbitration ever took place” because he “has refused to take part in the FINRA arbitration, or pay any fees associated with the arbitration procedure.” Plf. Motion at 2. He contends that he has therefore materially breached the arbitration agreement and the Court thus should adjudicate the merits of his claims. *Id.* at 3–4.

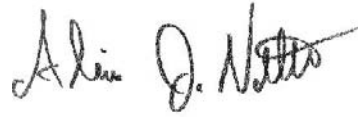
For the reasons stated in the Report and Recommendation and the Court’s order adopting it in full, Pierno’s motion is DENIED. Pierno may not avoid this Court’s ruling that his claims may proceed only in arbitration by refusing to participate in arbitration proceedings. Pierno’s motion for oral argument (Dkt. No. 38) is DENIED as moot. Pierno shall file a letter by October 31, 2020, stating whether he intends to proceed with his claims in arbitration and, if not, whether this case should be dismissed for failure to prosecute. Fidelity Brokerage Services may file a response by November 14, 2020. The Clerk of Court is respectfully directed to mail a copy of

this order to Pierno and to note the mailing on the public docket.

This resolves Docket Numbers 36 and 38.

SO ORDERED.

Dated: October 5, 2020
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", is positioned above a horizontal line.

ALISON J. NATHAN
United States District Judge